

NEBRASKA SPECIAL EDUCATION DISPUTE RESOLUTION SYSTEMS – February, 2010

STATE COMPLAINT PROCESS 92 NAC 51-009.11	MEDIATION 92 NAC 51-009.12	SPECIAL EDUCATION DUE PROCESS HEARING 92 NAC 51-009.14 92 NAC 55	RESOLUTION PROCESS 92 NAC 51-009.13
<ul style="list-style-type: none"> • A written state complaint can be filed by an organization or individual (parent, teacher, other people, school district, etc.) • Alleges school district has not followed special education law. • Must allege a violation that occurred not more than one year prior to the date the complaint is received according to 92 NAC 51-009.11 • Complaint must: <ul style="list-style-type: none"> • be in writing • be signed • include facts about violation of a requirement of 92 NAC 51 • If complaint alleges violations regarding a specific child, it must: <ul style="list-style-type: none"> • Include child's name, address, name of school child is attending • Complaint must also include a proposed resolution to the problem, to the extent known by the person making the complaint • Copy of the complaint <u>MUST</u> be sent to the school district at the same time sent to NDE • Within 14 days of receipt of a signed, written complaint, meeting all requirements of 92 NAC 51-009.11B, NDE, Office of Special Education will notify, in writing, the District against which the violation has been alleged • District has 14 days to submit a written response • Within 60 calendar days of receipt of signed written complaint, NDE office of SPED will provide written notification of findings of facts and conclusions • If a written complaint is received that is also the subject of a due process hearing under 92 NAC 55, or contains multiple issues of which one or more are part of that hearing, the Office of Special Education officials shall set aside any part of the state complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the state complaint that is not a part of the due process action must be resolved using the time limit and procedures described in 92 NAC 51-009.11 • NDE has a complaint form that can be used for filing complaints: http://www.nde.state.ne.us/sped/forms.html 	<ul style="list-style-type: none"> • Allows parties to resolve disputes involving identification, evaluation, or educational placement of a child, or the provision of FAPE • Voluntary on the part of parties • NDE bears the cost of the mediation process • Conducted by a qualified, impartial mediator • If a resolution is reached, the parties execute a legally binding agreement, signed by both parties • Mediation is not used to delay or deny the right to a due process hearing • Discussions in mediation sessions are confidential and cannot be used as evidence in any subsequent due process hearings or civil proceedings • Provisions for seeking mediation include contacting the Nebraska office of Dispute Resolution 	<ul style="list-style-type: none"> • A legal process used by parents and districts to decide issues • Can be used for problems with: <ul style="list-style-type: none"> • Evaluations • IEPs • Education placement decisions • FAPE • School district may request a due process hearing if: <ul style="list-style-type: none"> • Parent refuses to give consent for initial evaluation • The district feels it should not pay for an IEE (92 NAC 51.006-07D2) • When a hearing is initiated, schools must inform parents about the availability of mediation • Any party to a due process hearing has the right to be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities • Parents may use a lawyer to represent them and their child at a due process hearing, or they may represent themselves at the hearing • Due process hearing procedures includes (92 NAC 55): <ul style="list-style-type: none"> • witnesses • questioning and cross-examination, and • presentation of evidence by both the parents and the school • COSTS (92 NAC 55-007.05) <ul style="list-style-type: none"> • All formal hearings shall be recorded by a court reporter at the expenses of NDE • All other costs of a formal hearing shall be paid by the party or parties incurring the costs, unless otherwise ordered by the U.S. District Court pursuant to the IDEA • The hearing officer's decision is final and binding unless appealed • Appeal process – see 92 NAC 55 	<ul style="list-style-type: none"> • Within 15 days of receiving notice of parent's due process complaint, and prior to the initiation of a due process hearing under 92 NAC 55, the school district must convene a meeting with the parent and relevant member or members of the IEP Team • May not include an attorney to the school district unless the parent is accompanied by an attorney. • Purpose of Resolution Meeting is: <ul style="list-style-type: none"> • To provide opportunity for parent to discuss the due process complaint, • To present the facts that form the basis of the due process complaint • to allow the district an opportunity to resolve the dispute that is the basis for the due process complaint • Resolution Meeting can be waived if district and parent agree in writing to waive the meeting; or if they agree to use mediation process • If school district has not resolved the due process complaint within 30 days of receipt of the due process complaint, the due process hearing may occur • Guidance on Resolution Period see 92 NAC 51-009.13B through 92 NAC 51-009.13B5 • Adjustment to 30-day Resolution Period see 92 NAC 51-009.13C through 51-009.13C1c • If resolution is reached at the meeting, the parties must execute a legally binding agreement 92 NAC 51-009.13D

